TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 54

THE UNITED STATES OF AMERICA, EX REL. ELLEN KNAUFF, PETITIONER,

vs.

EDWARD J. SHAUGHNESSY, ACTING DIRECTOR OF IMMIGRATION AND NATURALIZATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 18, 1949.

CERTIORARI GRANTED MAY 2, 1949.

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* Admitted into evidence at page 12 hereof.

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA, *ex rel.*, ELLEN KNAUFF,

Relator-Appellant,

against

W. FRANK WATKINS, District Director of Immigration and Naturalization Service,

Respondent-Appellee.

Statement Under Rule 15

This is an appeal from an order of the Honorable Murray Hulbert, United States District Judge, entered on January 3, 1949. No hearing was held on said writ except that during the argument thereof held on November 16, 1948, Judge Hulbert permitted documentary evidence to be offered. This appeal from the aforesaid order was taken on January 4, 1949.

There was no change of parties or attorneys.

4

Writ of Habeas Corpus

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

Civ. 47-585

To: *W. Frank Watkins, District Director of Immigration and Naturalization for the District of New York and/or whomsoever may have the custody of the body of Ellen Knauff.*

YOU ARE HEREBY COMMANDED that you have the body of
5 Ellen Knauff, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, before one of the Judges of the United States District Court within and for the District aforesaid on the 13th day of October 1948 at 10:30 o'clock in the for noon of that day, in the United States Court House, Room 506, in the Borough of Manhattan, City of New York, to do and receive all and singular those things which the said Judge shall then and there consider of you in this behalf, and have you then and there this Writ.

WITNESS, the HONORABLE JOHN C. KNOX, Judge of this
6 Court, at New York, N. Y., in the said District, this 9 day of October, 1948.

WILLIAM V. CONNELL,
Clerk.

WRIT ALLOWED Oct. 9, 1948.

VINCENT L. LEIBELL,
U. S. D. J.

7

Petition of Kurt W. Knauff

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

The petition of KURT W. KNAUFF, respectfully shows this Court:

8

1. I am the husband of Ellen Knauff who is at present at Ellis Island, detained by respondent, and I make this petition for the purpose of inducing this Court to issue a Writ of Habeas Corpus in behalf of my said wife.

2. I am a citizen of the United States by naturalization, having been naturalized on April 23, 1943 in the United States District Court of the Eastern District of South Carolina, number of citizenship papers: 5488116.

3. During the World War, I was a soldier in the Armed Forces of the United States from November 21, 1942 to January 17, 1946, at which time I received an honorable discharge at the Fort Dix, New Jersey separation center. A photostatic copy of my discharge papers is annexed hereto and made a part hereof, and marked "Exhibit 1". 9

4. On February 28, 1948, I married my above named wife, Ellen Knauff, whose maiden name was Ellen Raphael, at Frankfurt, Germany. Said marriage was consummated with the permission of the Office of the Advocate General.

5. At the time of my marriage, my said wife was an employee of the Signal Division of the United States Army in Germany.

10 *Petition of Kurt W. Knauff*

6. My said wife proceeded to the United States where she arrived on August 14, 1948. Since said day she has been detained by the Immigration and Naturalization Service at Ellis Island, New York, subject to admission proceedings, and I have just been notified by the Office of the Commissioner of Immigration and Naturalization that she has been excluded from the United States for security reasons, and that her appeal from an exclusion order of the Board of Special Inquiry has been denied.

11 7. The exclusion of my said wife is arbitrary and illegal, in that she has been at all times loyal to the United States, and that she has a right to admission to the United States under Public Law 271 of December 28, 1945.

8. My said wife is not being held for the commission of any crime, or for any other reason except as aforesaid.

No previous application has been made for the relief herein demanded.

WHEREFORE, it is respectfully prayed that this Court issue a Writ of Habeas Corpus to inquire into the legality
12 of my wife's detention, and to determine the justification thereof.

KURT W. KNAUFF.

(Verified by Gunther Jacobson, October 8, 1948.)

Exhibit I, Annexed to Petition

COPY OF HONORABLE DISCHARGE FROM U. S. ARMY

(See opposite page ☛)

Exhibit I, Annexed to Petition

Army of the United States

Honorable Discharge

This is to certify that

KURT W KNAUFF ~~32~~ 639 552 TECHNICIAN FOURTH GRADE

HQ BATTERY 100TH DIVISION

Army of the United States

is hereby Honorably Discharged from the military service of the United States of America.

This certificate is awarded as a testimonial of Honest and Faithful Service to this country.

Given at SEPARATION CENTER
FORT DIX, NEW JERSEY

Date 17 JANUARY 1946

1946

J. H. Gunter

J.H.GUNTER
MAJOR INFANTRY

4317

1/1

ENLISTED RECORD AND REPORT OF SEPARATION

HONORABLE DISCHARGE

1. LAST NAME - FIRST NAME - MIDDLE INITIAL	2. ARMY SERIAL NO.	3. GRADE	4. ARM OR SERVICE	5. COMPONENT
KNAUF, KURT W	32 639 552	TEC 4	FA	AUS

6. ORGANIZATION	7. DATE OF SEPARATION	8. PLACE OF SEPARATION
HQ BTRY 100TH DIVISION	17 JAN 1946	SEP CTR FT DIX NJ

9. PERMANENT ADDRESS FOR MAILING PURPOSES	10. DATE OF BIRTH	11. PLACE OF BIRTH
114-20 133RD ST SO OZONE PK LI NY	1 DEC 1908	GERMANY

12. ADDRESS FROM WHICH EMPLOYMENT WILL BE SOUGHT	13. COLOR EYES	14. COLOR HAIR	15. HEIGHT	16. WEIGHT	17. NO. DEPEND
SEE 9	BLUE	BROWN	6-0	180 LBS.	0

18. RACE			19. MARITAL STATUS			20. U.S. CITIZEN		21. CIVILIAN OCCUPATION AND NO.
WHITE	NEGRO	OTHER (specify)	SINGLE	MARRIED	OTHER (specify)	YES	NO	
X			X			X		RADIO REPAIRMAN 5-83.411

MILITARY HISTORY

22. DATE OF INDUCTION	23. DATE OF ENLISTMENT	24. DATE OF ENTRY INTO ACTIVE SERVICE	25. PLACE OF ENTRY INTO SERVICE
21 NOV 42		28 NOV 42	NYC NY

SELECTIVE SERVICE DATA	26. REGISTERED YES	26. REGISTERED NO	27. LOCAL B.S. BOARD NO.	28. COUNTY AND STATE	29. HOME ADDRESS AT TIME OF ENTRY INTO SERVICE
	X		266	QUEENS CO NY	133-11 WEXFORD TERRACE HOLLIS N

30. MILITARY OCCUPATIONAL SPECIALTY AND NO.	31. MILITARY QUALIFICATION AND DATE (i.e., infantry, aviation and marksmanship badges, etc.)
RADIO OPERATOR 776	CARBINE SS 171 19 AUG 43

32. BATTLES AND CAMPAIGNS

CENTRAL EUROPE, RHINELAND
GO 33 WD 45 AS AMENDED

33. DECORATIONS AND CITATIONS

EUROPEAN-AFRICAN-MIDDLE EASTERN SERVICE MEDAL, GOOD CONDUCT MEDAL, WORLD WAR II VICTORY MEDAL, AMERICAN SERVICE MEDAL

34. WOUNDS RECEIVED IN ACTION

NONE

35. LATEST IMMUNIZATION DATES			
SMALLPOX	TYPHOID	TETANUS	OTHER (specify)
28AUG44	14AUG45	31AUG44	NONE

36. SERVICE OUTSIDE CONTINENTAL U.S. AND RETURN		
DATE OF DEPARTURE	DESTINATION	DATE OF ARRIVAL
6 OCT 44	E T O	20 OCT 44
31 DEC 45	U S A	10 JAN 46

37. TOTAL LENGTH OF SERVICE						38. HIGHEST GRADE HELD
CONTINENTAL SERVICE			FOREIGN SERVICE			
YEARS	MONTHS	DAYS	YEARS	MONTHS	DAYS	
1	11	14	1	2	5	TEC 4

39. PRIOR SERVICE

NONE

40. REASON AND AUTHORITY FOR SEPARATION CONVENTENCE OF THE GOVERNMENT AR 615-365 15 DEC 44 AND RR 1-1 (DEMOBILIZATION)

41. SERVICE SCHOOLS ATTENDED

42. EDUCATION (Years)		
Grammar	High School	College

16

Return to Writ of Habeas Corpus

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

Civil 47-585

[SAME TITLE]

I, ALVIN LIEBERMAN, an attorney employed by the United
17 States Department of Justice, Immigration and Naturalization Service, hereby certify and make return to the writ of habeas corpus heretofore sued out by the relator herein as follows:

1. The relator, a 33 year old female, native of Germany, last a citizen of Czechoslovakia, presently stateless, arrived at the port of New York on August 14, 1948, ex USAT "Comfort", and applied for admission to the United States under the provisions of Public Law 271. On that day she was temporarily excluded from admission to the United States by an immigrant inspector under the provisions of
18 8 C. F. R. 175.57.

2. On October 6, 1948, the Assistant Commissioner of Immigration and Naturalization recommended that the relator's temporary exclusion be made permanent without the right of a hearing before a Board of Special Inquiry under the provisions of 8 C. F. R. 175.57. On the same day, this recommendation was adopted by the Attorney General, who ordered relator excluded from the United States.

3. Relator is presently detained at Ellis Island, New York Harbor, New York, under the aforementioned order of exclusion.

WHEREFORE, it is respectfully prayed that the writ of habeas corpus herein be dismissed and the relator remanded to the custody of the respondent.

Dated: New York, N. Y., November 10, 1948.

ALVIN LIEBERMAN.

22

Traverse

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Civil 47-585

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

23

Ellen Knauff, the relator herein, as and for a traverse to the return of respondent, says:

(1) I hereby repeat and re-iterate all allegations of the petition for habeas corpus.

(2) I applied for admission pursuant to section 232 of title 8, U. S. C. (Public Law 271, of 1945) as the wife of a United States citizen having an honorable discharge certificate from the armed forces of the United States during the Second World War. Said statute provides, with respect

24 to spouses of such veterans, that they

> "shall, if otherwise admissible under the immigration laws and if application for admission is made within three years of December 28, 1945, be admitted to the United States."

Contrary to the mandates of the statues I have been detained without reason at Ellis Island since August 14, 1948, and illegally deprived of my liberty.

(3) The proceedings before the Immigration and Naturalization Service are illegal and arbitrary in that the statutory proceedings were not administered to me. Pur-

suant to 8 U. S. C. 153 Boards of Special Inquiry shall have authority to determine whether an alien is allowed to land. I was not placed before such board. No exclusion order was entered against me as provided by law. I was held at Ellis Island and for five weeks refused seeing a lawyer and access to the courts. During this time I was secretly examined and questioned by an official and finally advised that I was excluded from the United States. I submit that this procedure is contrary to law.

(4) The reason or excuse for my exclusion has been stated by Attorney General Tom C. Clark in a letter addressed to Mr. Joseph D. Nunan who intervened in my behalf. This letter reads as follows:

"THE ATTORNEY GENERAL
WASHINGTON.

October 4, 1948.

Dear Joe:

Since talking with you last week, I have again looked into the case of Mrs. Ellen Knauff.

I can see no alternative to excluding her. She was formerly a paid agent of the Czechoslovakian Government, and reported on American personnel assigned to the Civil Censorship Division in Germany. The Federal Bureau of Investigation feels that she would be a hazard to internal security.

I am sorry not to be able to give you a more favorable conclusion.

With every kind wish,

Sincerely,
NUNAN,
Attorney General.

Joseph D. Nunan, Jr., Esquire,
Commonwealth Building,
Washington 6, D. C."

28 *Traverse*

(5) I hereby state that the facts stated in this letter are untrue and that there is no evidence upon which this charge is based and that I was never confronted with any evidence to substantiate this charge.

I am of German Jewish descent. Prior to the war I was admitted to Great Britain as a refugee. Being a violent anti-Nazi, I enlisted in the royal air force where I served honorably from January 1, 1943, to May 30th, 1946. At the time of my discharge I was a flight sergeant and my discharge papers state:

29 "(c) Cause of discharge Services no longer required at own request .....

(d) General character (1) during service Very Good, (11) on discharge Very Good .....

She is very intelligent and of good personality and character. She has given every satisfaction."

The discharge papers were executed by the Air Commodore on July 26, 1946.

(6) Upon my discharge from the Royal Airforce I found employment with the American War Department, 30 Occupation Forces, in Frankfurt, Germany. I served there first for the Civil Censorship Divisions, thereafter for the Signal Division. I left this employment temporarily after my marriage in order to go to the United States, in June 1948. My service record in the War Department was exemplary and I have favorable certificates from every American superior for whom I worked. I would still be with the U. S. Army, had I not had the desire to establish residence in the United States within the time limited by Public Law 271 of 1945, i.e. before December 28, 1948.

(7) In order to comply with the requirements of said law I was given leave of absence, with the understanding

that after my admission to the United States for permanent residence I would return to Frankfort to continue my service in behalf of the government of the United States. 31

(8) I married my husband in February 1948 with the consent of the Commanding General of the Frankfurt military post of the U. S. Army. Before such consent is given, a thorough check is made by the Office of the Judge Advocate General. Only after I had been given a clean bill by all service commands and intelligence agencies were we permitted to marry. 32

(9) I believe that I am a victim of a foul denunciation of a woman jealous of my husband. I submit that I should not be treated by the Department of Justice the way I have been treated, without a hearing and on secret denunciations.

(10) I never gave any information to any previous or present Czech government. I never received a penny in payment from any Czech Government.

(11) My husband came to this country on a special furlough, to help me in my trouble. He has to return to his post on November 22, 1948. Request is made to take his testimony at once that it will be available before his departure. 33

(12) There is no legal basis for rule 175.57 C. F. R. and the Star Chamber proceedings administered to me thereunder.

WHEREFORE I pray this court to release me from custody.

ELLEN KNAUFF.

34

Excerpt From Stenographer's Minutes

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Civ. 47-585

[SAME TITLE]

Before:

HON. MURRAY HULBERT,

35 *District Judge.*

New York, November 16, 1948,
11:45 A. M.

Appearances:

GUNTHER JACOBSON, ESQ.,
Attorney for Relator.

JOHN F. X. McGOHEY, ESQ., United States Attorney,
For the Respondent;

By William J. Sexton, Esq., Assistant United States Attorney.

36

After argument of counsel and presentation of certain documents to the court, the court ruled as follows:

Let the stenographer have these letters so that they can be put in the record, and you can have them back.

Mr. Jacobson: Very good, sir.

(Marked Relator's Exhibits 1 to 10 inclusive.)

37

Relator's Exhibit 1

GROUP "B" 7742 CIVIL CENSORSHIP DIVISION

EUROPEAN COMMAND

APO 757 U. S. ARMY

6 August 1947

201—BOXHORNOVA, Ellen

SUBJECT: Recommendation of Ellen BOXHORNOVA

To : Whom it may concern

1. This is to state that Ellen BOXHORNOVA, Allied Civilan 38
Employee, has been employed with this organization as a Relevant Record Analyst and Monitor from 27 May 1946 to present date.

2. Employee's conduct has been satisfactory and her last efficiency rating reads: "Very Good".

FOR THE COMMANDING OFFICER:

MARK WINN
1st Lt., CAC
Adjutant

Telephone: Frankfurt 85051 39

2

3

Mr. Jay J. Van Trawver

40

Relator's Exhibit 2

20 March 1947.

My dear Hendry,

Learning that my friend, Ellen Boxhornova, was planning to stop over at Nurnberg on her way to Prague, I have asked her to drop in to see you and convey my cordial regards to you.

I have known Ellen practically since my arrival in Frankfurt, and have had many opportunities of exchang-
41 ing ideas with her, and generally of appraising her intelligence and character. My appreciation of her abilities and her physical charm has grown increasingly with every new encounter. In my opinion she is far above the average in background and general competence.

Ellen is at present employed as a Research Analyst with the CCD. She mentioned to me, however, that she was planning to resign shortly in order to rejoin the WAAF's with whom she served a number of years during the war. I tried to dissuade her from this decision because I feel that her special knowledge of things German, her
42 perfect command of the English language, and her insight into current problems could be used to greater advantage by the United States Government in Germany at this time.

I am convinced that she would be an invaluable asset to you in connection with the Nurnberg trials. I strongly

recommend Ellen Boxhornova to you for the highest consideration which it is in your power to extend to her.

With warm regards,
M. J. ARONSON
Major JAGD

The Honorable
Henry A. Hendry,
Secretary General,
International Military Tribunal,
Nurnberg, Germany.

33. DECORATIONS AND CITATIONS

EUROPEAN-AFRICAN-MIDDLE EASTERN SERVICE MEDAL, GOOD CONDUCT MEDAL, WORLD WAR II VICTORY MEDAL, AMERICAN SERVICE MEDAL

34. WOUNDS RECEIVED IN ACTION

NONE

35. LATEST IMMUNIZATION DATES

SMALLPOX	TYPHOID	TETANUS	OTHER (specify)
28AUG44	14AUG45	31AUG44	NONE

36. SERVICE OUTSIDE CONTINENTAL U.S. AND RETURN

DATE OF DEPARTURE	DESTINATION	DATE OF ARRIVAL
6 OCT 44	ETO	20 OCT 44
31 DEC 45	USA	10 JAN 46

37. TOTAL LENGTH OF SERVICE

CONTINENTAL SERVICE			FOREIGN SERVICE		
YEARS	MONTHS	DAYS	YEARS	MONTHS	DAYS
1	11	14	1	2	5

38. HIGHEST GRADE HELD

TEC 4

39. PRIOR SERVICE

NONE

40. REASON AND AUTHORITY FOR SEPARATION CONVENIENCE OF THE GOVERNMENT AR 615-365 15 DEC 44 AND RR 1-1 (DEMOBILIZATION)

41. SERVICE SCHOOLS ATTENDED

100TH DIV RADIO SCH 200 HOURS RADIO OPERATOR 1943

42. EDUCATION (Years)

Grammar	High School	College
8	2	0

PAY DATA

43. LONGEVITY FOR PAY PURPOSES			44. MUSTERING OUT PAY		45. SOLDIER DEPOSITS	46. TRAVEL PAY	47. TOTAL AMOUNT, NAME OF DISBURSING OFFICER
YEARS	MONTHS	DAYS	TOTAL	THIS PAYMENT			
3	1	26	$ 300	$ 100	NONE	$ 4.50	253.61 J HARRIS COL FD

INSURANCE NOTICE

IMPORTANT IF PREMIUM IS NOT PAID WHEN DUE OR WITHIN THIRTY-ONE DAYS THEREAFTER, INSURANCE WILL LAPSE. MAKE CHECKS OR MONEY ORDERS PAYABLE TO THE TREASURER OF THE U. S. AND FORWARD TO COLLECTIONS SUBDIVISION, VETERANS ADMINISTRATION, WASHINGTON 25, D.C.

48. KIND OF INSURANCE			49. HOW PAID		50. Effective Date of Allotment Discontinuance	51. Date of Next Premium Due (One month after 50)	52. PREMIUM DUE EACH MONTH	53. INTENTION OF VETERAN TO		
Nat. Serv.	U.S. Govt.	None X	Allotment	Direct to V. A.				Continue	Continue Only	Discontinue
							$ NONE		$	

54. RIGHT THUMB PRINT

55. REMARKS (This space for completion of above items or entry of other items specified in W. D. Directives)

LAPEL BUTTON ISSUED
INACTIVE ERC FROM 21 NOV [redacted] TO 27 NOV 42
ASR SCORE (2 SEP 1945)-55

4317

56. SIGNATURE OF PERSON BEING SEPARATED

Kurt A. Knauff

57. PERSONNEL OFFICER (Type name, grade and organization - signature)

J E WHITE JR
CAPT AC

WD AGO FORM 53 - 55
1 November 1944

This form supersedes all previous editions of WD AGO Forms 53 and 55 for enlisted persons entitled to an Honorable Discharge, which will not be used after receipt of this revision.

1/2

Relator's Exhibit 3

STANDARD FORM 50
UNITED STATES
CIVIL SERVICE COMMISSION
OCTOBER 1946

NOV 16 1948

Pet. Ex. 3

WAR DEPARTMENT

FORM APPROVED
BUDGET BUREAU NO. 51-R004

NOTIFICATION OF PERSONNEL ACTION

Joj

1. NAME (MR.—MISS—MRS.—FIRST—MIDDLE INITIAL—LAST)	2. DATE OF BIRTH	3. JOURNAL OR ACTION NO.	4. DATE
Ellen Kneuff	1-1-15		March 4, 1948

This is to notify you of the following action affecting your employment:

5. NATURE OF ACTION (USE STANDARD TERMINOLOGY)	6. EFFECTIVE DATE	7. CIVIL SERVICE OR OTHER LEGAL AUTHORITY
Reassignment - Correction	March 1,1948	Schedule A-1-?

FROM		TO
Clerk Typist Sig-P&T-262	8. POSITION TITLE	Clerk Steno Sig-EX-470
2-3, 11500 base p.a.	9. SERVICE, GRADE, SALARY	Same
Chief Signal Officer, P & T Signal Treining & Survey Frankfurt, Germany APO 757	10. ORGANIZATIONAL DESIGNATIONS	Same
EUCOM	11. HEADQUARTERS	Same
X FIELD ☐ DEPARTMENTAL	12. FIELD OR DEPT'L	X FIELD ☐ DEPARTMENTAL

13. REMARKS

Efficiency rating is good.

Nationality: Czech
Residence : UK

Relator's Exhibit 3

COPY OF WAR DEPARTMENT NOTIFICATION OF PERSONNEL ACTION

(See opposite page ☛)

Relator's Exhibit 4

Copy of War Department Notification of Personnel Action

(See opposite page ☛)

Relator's Exhibit 4

NOV 16 1948

Pltf. Ex. #4

STANDARD FORM 50
UNITED STATES
CIVIL SERVICE COMMISSION
OCTOBER 1946

WAR DEPARTMENT

FORM APPROVED
BUDGET BUREAU NO. 55-[illegible]

NOTIFICATION OF PERSONNEL ACTION

JOJ

1. NAME (MR.—MISS—MRS.—FIRST—MIDDLE INITIAL—LAST)	2. DATE OF BIRTH	3. JOURNAL OR ACTION NO	4. DATE
Ellen Knauff	1-1-15		Mar 4, 1948

This is to notify you of the following action affecting your employment:

5. NATURE OF ACTION (USE STANDARD TERMINOLOGY)	6. EFFECTIVE DATE	7. CIVIL SERVICE OR OTHER LEGAL AUTHORITY
Name Change from: Ellen Boxhorsova	Feb 28, 1948	CS Rule XIII

FROM		TO
Clerk Typist SIG-P&T-262	8. POSITION TITLE	Same
CAF-3, $1500 base p.a.	9. SERVICE, GRADE, SALARY	Same
CSIGO, P & T Signal Training & Survey, Frankfurt, Germany APO 757	10. ORGANIZATIONAL DESIGNATIONS	Same
EUCOM	11. HEADQUARTERS	Same
[X] FIELD [ ] DEPARTMENTAL	12. FIELD OR DEPT'L	[X] FIELD [ ] DEPARTMENTAL

13. REMARKS

Name change due to marriage February 28, 1948. Employee is married to a U.S. Civilian, CPC-8.

Nationality: Czech
Residence : UK

Relator's Exhibit 7

IC Form 1-1 (19 Mar 47)

(Classification)

INTERNAL ROUTE SLIP

NOV 16 1948

Peth. Ex 7

HEADQUARTERS, EUROPEAN COMMAND

FILE NO:

SUBJECT:

DATE: 17 November 1947

(Number each memo or minute consecutively Fill in each column, signed legibly draw a line across the sheet. Use entire width of sheet for long memoranda)

No	From	Pass to	Date	HAS THIS PAPER BEEN COORDINATED WITH ALL CONCERNED?
1	Chief Sig Tng Suv Team PP&T Div CCSigO	To Whom it May Concern	17 Nov 1947	1. Miss Ellen Boxhornova has been employed by this office since 1 September 1947 until the present time. 2. On or about 1 December 1947 Miss Boxhornova will be available for reassignment as this branch is to be dissolved. 3. Miss Boxhornova has proved very capable as a typist, the only position she held in my employ. She is reliable, conscientous and trustworthy and I would be very pleased to have her work for me again. 4. The following items are submitted: a. Character : Excellent b. Efficiency: Excellent. GEORGE M. STRAWN Captain, Signal Corps

58

Relator's Exhibit 5

HEADQUARTERS
EUROPEAN COMMAND

APO 403 US. Army
18 June 1948

TO WHOM IT MAY CONCERN:—

Mrs. Ellen Knauff has been employed as my secretary since 1 April 1948.

59

I have always found Mrs. Knauff to be discreet, capable, and interested in her work. I do not hesitate to recommend her for employment.

W. W. LINDSAY
W. W. LINDSAY
Lt. Colonel
Signal Corps

WWL:mrh

60

61

Relator's Exhibit 6

HEADQUARTERS
EUROPEAN COMMAND
Office of the Chief Signal Officer

APO 757
9 March 1948

TO WHOM IT MAY CONCERN:

1. Miss Ellen Boxhornova has been under my personal daily observation during the past six months. Her assignment included the usual stenographic, and typing duties and in addition librarian responsibilities for a highly technical and specialized library for the Signal Corps Technical Board. 62

2. Miss Boxhornova always exhibited excellent competence in handling her assignment without continuous supervision and while achieving efficient results. Her good judgement and common sense resulted in work well done. I believe Miss Boxhornova is capable of filling any position calling for the above characteristics.

63

George W. Olson
GEORGE W. OLSON
Captain, Signal Corps

Chief Signal Officer, P & T Signal Training & Survey Frankfurt, Germany APO 757	10. ORGANIZATIONAL DESIGNATIONS	Same	
EUCOM	11. HEADQUARTERS	Same	
X FIELD ☐ DEPARTMENTAL	12. FIELD OR DEPT'L	X FIELD ☐ DEPARTMENTAL	

13. REMARKS

Efficiency rating is good.

Nationality: Czech
Residence : UK

1500.00 Base p.a. rate
130.00 Qtrs.
511.00 Subs.
2141.00 Gross p.a. rate for 46 hr. wk.

This instrument corrects item #1 of SF 50 dated March 1, 1948 to show employee's name is Ellen Kneuff instead of Ellen Boxbornova due to marriage on February 28, 1946.

Sally A. Chapin

SALLY A. CHAPIN
CHIEF ADMIN

14. SIGNATURE OR OTHER AUTHENTICATION

15. VETERAN'S PREFERENCE								16. POSITION CLASSIFICATION ACTION			
NONE	5 PT.	10 POINT			WWII	WWI	OTHER	NEW	VICE	L.A.	REAL.
		DISAB.	WIFE	WIDOW							

17. SEX	18. RACE	19. APPROPRIATION	20. SUBJECT TO C. S. RETIREMENT ACT (YES—NO)	21. DATE OF OATH (ACCESSIONS ONLY)	22. LEGAL RESIDENCE
F	W	FROM: TO:	No		

U. S. GOVERNMENT PRINTING OFFICE 16—80625-1

AGL-(3)-3-48-30M-11960-3007

Relator's Exhibit 7

COPY OF INTERNAL ROUTE SLIP OF HEADQUARTERS, EUROPEAN COMMAND

(See opposite page ☛)

EUCOM	11. HEADQUARTERS	Same
[X] FIELD [ ] DEPARTMENTAL	12. FIELD OR DEPT'L	[X] FIELD [ ] DEPARTMENTAL

13. REMARKS

Name change due to marriage February 28, 1948. Nationality: Czech
Employee is married to a U.S. Civilian, CPC-8. Residence : USA

$1500.00 Base p.a. rate
180.00 Qtrs.
511.00 Subs.
$2191.00 Gross p.a. rate for 48 hr. wk.

Sally A. Chapin

SALLY A. CHAPIN
Chief Adm.

14. SIGNATURE OR OTHER AUTHENTICATION

15. VETERAN'S PREFERENCE								16. POSITION CLASSIFICATION ACTION			
NONE	5 PT.	10 POINT			WWII	WWI	OTHER	NEW	VICE	I. A.	REAL.
		DISAB.	WIFE	WIDOW							

17. SEX	18. RACE	19. APPROPRIATION	20. SUBJECT TO C. S. RETIREMENT ACT (YES—NO)	21 DATE OF OATH (ACCESSIONS ONLY)	22. LEGAL RESIDENCE
F	W	FROM: TO:	NO		

U. S. GOVERNMENT PRINTING OFFICE 16—80666—1

4. The following items are submitted:

a. Character : Excellent
b. Efficiency: Excellent.

GEORGE M. STRAHN
Captain, Signal Corps
Chief, Sig. Tng. Suv. Team

GMS/eb/Frankfurt 8912

(over)

(Classification)

7

70

Relator's Exhibit 8

THE ATTORNEY GENERAL

WASHINGTON

October 4, 1948

Dear Joe:

Since talking with you last week, I have again looked into the case of Mrs. Ellen Knauff.

I can see no alternative to excluding her. She was
71 formerly a paid agent of the Czechoslovakian Government, and reported on American personnel assigned to the Civil Censorship Division in Germany. The Federal Bureau of Investigation feels that she would be a hazard to internal security.

I am sorry not to be able to give you a more favorable conclusion.

With every kind wish,

Sincerely,
TOM
Attorney General

72 Joseph D. Nunan, Jr., Esquire
Commonwealth Building
Washington 6, D. C.

P. S. Come see us—Mary says she never hears when Catherine is this way—Can't you remedy this?

73

Relator's Exhibit 9

THE ATTORNEY GENERAL

WASHINGTON

September 9, 1948

Dear Joe:

This will acknowledge your letter of August 27, on behalf of Mrs. Ellen Knauff.

I recall her case very well and after giving it very careful consideration, signed the exclusion order, for security reasons. I regret very much that I haven't a more favorable report for you. 74

With kindest personal regards,

Sincerely,
TOM
Attorney General

Joseph D. Nunan, Jr., Esquire
Commonwealth Building
1625 K Street, N. W.
Washington 6, D. C.

75

P. S. When you are this way give me a ring.

76

Relator's Exhibit 10

ALLIED/NEUTRAL EXTENSION OF EMPLOYMENT AGREEMENT FORM (REVISED)

Part I.

1. My present employment agreement expires on 26 May 1948 and I (do) agree to extend such employment agreement in my present position until 26 November 1948 with C/Sig Officer. (Maximum period of extension is 6 months; minimum period of extension is 4 months.)

77

2. I understand that if a replacement for my position is available before the expiration of this extension, my employment agreement will be terminated upon fifteen (15) days notice.

KNAUFF
BOXHORNOVÁ, ELLEN
Type name

Sig–APD–54, Clk Typ, CWS–3
Position–Title–No–Grade

78

ELLEN KNAUFF
Signature

3 March 1948
Date

1—Employee
1—201 file

(Over)

Relator's Exhibit 10 79

Part II.

Check

x 1. Recommend retention of employee in his present position. It is not anticipated that position will be abolished on or before termination of above extension of employment agreement.

2. Do not recommend retention of employee in present position or elsewhere in the European Command for reasons listed below: (be specific—give facts.)

80

Employee's Supervisor W. W. Lindsay
Signature
W. W. LINDSAY
Lt Col Sig C
3 Mar 1948
Date

Comments of Civilian Personnel Liaison Agent:——

Personnel Liaison Agent——————
Signature 81

Date

Note:

1. Original of this form is to be retained by the employee.
2. Duplicate is to be returned to Civilian Personnel Branch *immediately* with WD Form 72 attached, requesting replacement on or about termination date of current agreement.
3. Extension forms received without WD Form 72 will be returned for proper action.

82

Opinion of Hulbert, *D. J.*

#1658

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Civ. 47-585

[SAME TITLE]

---

83 *Appearances*:

GUNTHER JACOBSON, ESQ.,
Attorney for Relator,
36 West 44th Street,
New York 18, N. Y.

HONORABLE JOHN F. X. MCGOHEY,
United States Attorney for the
Southern District of New York
Attorney for Respondent.

WILLIAM J. SEXTON, ESQ.,
Assistant United States Attorney.

84 ALVIN LIEBERMAN, ESQ.,
Attorney, U. S. Department of Justice,
Immigration and Naturalization Service.
Of Counsel.

This habeas corpus proceeding brings on for review, consideration and interpretation the provisions of Title 22 U. S. C. §§ 223 *et sec* (Foreign Relations and Intercourse), Presidential Proclamation No. 2523, November 14, 1941, § 157.57(a) of Title 8 of the Code of Federal

Regulations, and Title 9 U. S. C. § 232 (Aliens and Nationality).

Prima facie the Relator's application appears to have real merit.

She was born in Germany on January 1, 1915. In 1939, her attorney alleges, she found refuge from the Nazis in Great Britain, and thereafter, served from January 1, 1943 to May 30, 1946, in the Royal Air Force as a Flight Sergeant, with a character rating of "very good", equivalent to the United States Air Service rating of "excellent". Thereafter she was employed by the American Military 86
Government in Germany, first, in the Censorship Division, until August 1947, when that office was dissolved, and then by the Signal Division. That her services were satisfactory is attested by her officers who were her superiors, as well as her character and loyalty in exhibits submitted with her counsel's memorandum.

On February 28, 1948, petitioner married Kurt W. Knauff, which marriage was consummated with the consent of the Office of the Advocate General of the United States Army, at Frankfort, Germany. The Relator's husband, who is a native of Germany, became a citizen of the United States by naturalization on April 23, 1943, in the 87
United States District Court for the Eastern District of South Carolina. During World War II he was a soldier in the armed forces of the United States from November 21, 1942 to January 17, 1946, at which time he received an honorable discharge at Fort Dix Separation Center, and returned to the American Army of Occupation in Germany in a civilian capacity.

In June 1948 the Relator secured a temporary leave of absence and left the employ of the Signal Division of the United States Army in Germany, for the purpose of visiting the United States in order to make application for naturalization under § 312 of the Nationality Act of 1940

Exhibit 11 Annexed to Affidavit of Gunther Jacobson

R.A.F. FORM 1394.

The corner of this certificate to be cut off if the airman airwoman is charged with a "bad" character, or with disgrace or if specially directed by the Air Council.

ROYAL AIR FORCE.

BRIEF STATEMENT OF SERVICE AND CERTIFICATE OF DISCHARGE OF

SURNAME BOXHORNOVA, OFFICIAL No. 2146772.

CHRISTIAN NAMES Ellen.

Date of ~~enlistment~~ enrolment 1st.January,1943. Terms of ~~enlistment~~ enrolment D. of P.E.

(a) Date reported for regular service 8th. February,1943.

Branch of Air Force in which enlisted W.A.A.F. R.A.F. trade on discharge Clerk/General Duties(M).

Date of discharge 30th.May,1946. Rank on discharge Flight Sergeant.

Cause of discharge Services no longer required - at own request.

(Para. 652 Clause 22 King's Regulations and Air Council Instructions.)

(d) General character (i) during service Very Good. (ii) on discharge Very Good.

(e) Degree of trade proficiency :—A -. B Satisfactory.

Special qualifications None.

(f) Medals, Clasps, Decorations, Mentions in Despatches, Special Commendations, etc.

DESCRIPTION OF ABOVE-NAMED AIRMAN/AIRWOMAN ON DISCHARGE.

Date of birth 1st. January,1915. Marks or scars Vacc. 4 right arm.

5 4 1 Vacc. 1 left arm. Birthmark left knee.

Exhibit 14 Annexed to Affidavit of Gunther Jacobson

Form N-400
U. S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
(Rev. 1-1-45)

Form Approved
BUDGET BUREAU NO. 43 R079.1

No. .....

Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization

For use in searching records of arrival:

RECORDS EXAMINED

Card index .....
Index books .....
Manifests .....
.....
.....

Use Form N-215 or N-230 in issuing certificate of arrival on this application.

RECORD FOUND

Place .....
Name .....
.....
Date .....
Manner .....
Marital status .....
.....
(Signature of person making search)

TO THE APPLICANT: DO NOT WRITE ABOVE THIS LINE. READ CAREFULLY AND FOLLOW THE INSTRUCTIONS ON LAST PAGE HEREOF.

☛ *Take or mail this application to:*
IMMIGRATION AND NATURALIZATION SERVICE, 70 Columbus Ave. New York 23, N. Y.

Date November 26 nd, 1948

I, ELLEN KNAUFF (Name in full—print), residing at 114-20 133 rd street, South Ozone Park, L. I. N. Y. (Number and street) at present detained at Ellis Island (City or town), desire to file a petition for naturalization in the U. S. District Court (Name of court) Southern District of New York (State), I submit herewith a statement of facts to be used in filing such petition, three photographs of myself, each of which I have signed, and my declaration of intention (first paper), if one is required.

I hereby apply for a Certificate of Arrival (if required) showing my lawful entry into the United States for permanent residence. **NOTE.—IF THIS APPLICATION IS ACCOMPANIED BY A DECLARATION OF INTENTION (FIRST PAPER) MADE SINCE JULY 1, 1929, ANSWER ONLY QUESTION NUMBER 5 ON THIS PAGE.**

(1) I arrived in the United States through the port of NEW YORK (City or town), N. Y. (State)
under the name of ELLEN KNAUFF, on AUGUST 14 1948 (Month) (Day) (Year)
on the vessel USAT COMFORT
(If arrival was through {Canada / Mexico} I arrived at the port of ..... (If otherwise than by vessel, show manner of arrival) {Canada / Mexico}
on ..... on the vessel .....

(18) In what places in the United States have you resided during the past five years?

never resided here before — From ____ to ____
(City or town) (State) (Month) (Year) (Month) (Year)

From ____ to ____
(City or town) (State) (Month) (Year) (Month) (Year)

From ____ to ____
(City or town) (State) (Month) (Year) (Month) (Year)

(19) What were the names, occupations, and addresses of your employers during the last 5 years?

ROYAL AIR FORCE — WAAF 2176772 — LONDON — ENGLAND — 1943-1946
(Employer's name) (Occupation) (Number and street) (City) (State) (Dates of employment)

WAR DEPARTMENT — CLERK — WASHINGTON — D.C. — 1946-1948
(Employer's name) (Occupation) (Number and street) (City) (State) (Dates of employment)

(20) Have you read the following oath of allegiance? YES

I HEREBY declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God.

Are you willing to take this oath in becoming a citizen? YES

Of what country are you now a citizen or subject? STATELESS

(21) If necessary, are you willing to take up arms in defense of the United States? YES

Have you ever, during the time this country was at war, deserted the military or naval forces of the United States, or departed from the jurisdiction of the enrollment district or the United States to avoid draft into the military or naval forces of the United States? NO

(22) How many times have you ever been married? TWICE

(23) Have you ever been an inmate of an insane asylum? NO

(24) Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? NO

If so, give date, place and cause of arrest and disposition of each case

(25) Have you ever been deported from the United States, or are deportation proceedings now pending against you? NO. I AM ILLEGALLY HELD AT ELLIS ISLAND now.
~~If so, state all facts~~

(26) During the last ten (10) years I have been a member of the following organizations and no other YOUNG WOMEN CHRISTIAN ASSOCIATION IN LONDON AND ROYAL AIR FORCE ASSOCIATION IN LONDON

(27) Was your father or mother ever a citizen of the United States? NO If so, give full particulars

(28) Did you register under the Alien Registration Act of 1940? I do not know, I dont believe so.

88 *Opinion of Hulbert, D. J.*

by virtue of the provisions of Public Law 271 approved November 28, 1945 (§§ 232 to 237 Title 8 U. S. C.) which Relator claims conferred that right upon her as a War Bride provided she established her residence in the United States before December 28, 1948.

She arrived at the Port of New York on August 14, 1948, and has since been detained at Ellis Island subject to an exclusion order.

When her husband, who had procured a leave of absence from his civilian post under the United States Army in
89 Germany and came to New York to aid his wife, was notified by the Office of the Commissioner of Immigration and Naturalization that Relator had been excluded from the United States for security reasons, and that her appeal from an exclusion order had been denied, he instituted this proceeding October 9, 1948, but returned to Germany prior to the expiration of his leave of absence.

The Relator, after examination by an Immigration Inspector, was ordered excluded by the Attorney General pursuant to the provisions of § 175.57(a) of Title 8 of the Code of Federal Regulations*, as an alien whose entry

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* "Any alien, even though in possession of a permit to enter, or
90 exempted under these regulations from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in §175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States."

into the United States would be prejudicial to the interests of the United States.

The promulgation of this regulation was authorized by Title 22 U. S. C. § 223, which reads as follows:

> "§ 223. *War-time restrictions generally.* When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and 92
> prohibitions in addition to those provided otherwise than by sections 223-226b of this title be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful. As amended June 21, 1941, c.210, §1, 55 Stat. 252."

The Presidential Proclamation issued November 14, 1941** pursuant thereto is set forth in the margin.

** "Whereas the act of Congress approved on May 22, 1918 (40 93
Stat. 559), as amended by the Act of Congress approved on June 21, 1941 (Public Law 114, 77th Cong.; chap. 210, 1st sess.; 55 Stat. 252), vests authority in me to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States when the United States is at war, * * *

Whereas the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States;

Now, Therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority vested

94 *Opinion of Hulbert, D. J.*

It is the contention of the Relator that she is entitled to admission into the United States pursuant to the provisions of the so-called War Brides Statute, Title 8 U. S. C. §232, and the court sets forth the language of the statute as quoted by Relator's counsel:

> "Notwithstanding . . . the documentary requirements of any of the immigration laws or regulations, executive orders, or Presidential proclamations issued thereunder, alien spouses . . . of U. S. citizens . . . having an honorable discharge cer-
95 tificate from the armed forces of the U. S. during World War II shall, if otherwise admissible under the immigration laws . . . be admitted to the United States . . ."

Relator's counsel further quotes § 236 of Title 8 U. S. C.:

> "For the purpose of sections 232-237 of this title, World War II shall be deemed to have commenced on December 7, 1941, and to have ceased on upon the termination of hostilities as declared by the President . . ."

96 And contends that the termination of hostilities was proclaimed at 12 o'clock noon on December 31, 1946, by Presi-

---

in me as set forth above, do hereby find and publicly proclaim and declare that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed upon the departure of persons from and their entry into the United States, * * * and I make the following rules, regulations and orders which shall remain in force and effect until otherwise ordered by me: * * *

No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General."

dential Proclamation 2714, 12 F. R. 1, and consequently, as far as alien spouses are concerned the war is at an end.

This court had occasion recently in the disposition of motions to dismiss an indictment against twelve alleged Communists for conspiracy to state (*United States* v. *Foster et al.*, 120 N. Y. Law Journal, 1133, 1134, November 15, 1948):

> "Nor is the assertion that we are now living in peace times technically correct because World War II has not been brought to a final close, and, as a matter of fact, we are living in an atmosphere of 98 threatened strife."

But there is a higher authority (*Ludecke* v. *Watkins, District Director of Immigration*, 335 U. S. 160 (1948)), in which there is an illuminating discussion pages 166 to 170.

It is to be noted that §232 of Title 8 contains this language, "if otherwise admissible under the immigration laws", which was discussed and construed by Judge Bone in *Bonham* v. *Bouiss*, C. C. A. 9th, 161 F. (2d) 667 (1947), page 679:

> "While the legislation was designed to facilitate the admission of spouses and children acquired by 99 members of our Armed Forces while overseas, it is clear that Congress did not go further and provide complete exemption from *all* immigration requirements. The italicized portions of the statute above quoted clearly demonstrate that Congress intended to let down only two bars—one as to physical and mental defects and the other as to documentary requirements. All others are retained by the phrase 'if otherwise admissible under the immigration laws'."

Therefore, it cannot be said that §232 of Title 8 in any way affected the Presidential Proclamation No. 2523 or the statutory enactment which authorized it.

100 *Opinion of Hulbert, D. J.*

It is further urged by the counsel for the Relator that

> "Aliens arriving in the United States may be excluded according to law pursuant to sections 136 and 137 of Title 8 U. S. C. According to these provisions there are excluded: Anarchists, opposers of organized government, advocates of violence, publishers of subversive doctrines and similar elements."

And then he contends that in such cases boards of special inquiry must be called into action pursuant to section 153 of Title 8, U. S. C. But, manifestly, the Relator is not in
101 that category. On the other hand, the rule set forth in the Presidential Proclamation 2523 expressly provides that it must appear to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States with the concurrence of the Attorney General.

As stated in §175.57b of Title 8 of the Code of Federal Regulations:

> "In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the categories set forth in §173.53*, no hearing by
> 102 a board of special inquiry shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in §173.53 on the basis of information of a confidential nature, the dis-

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* Subdivision (h)

"Any alien whose admission would endanger the public safety as provided in any Executive order issued in pursuance of the act of Congress approved June 20, 1941 (ch. 209, 5 Stat. 252; 22 U. S. C. Sup. 228, 229."

closure of which would be prejudicial to the public interest."

Not even the court may have access to the record in the Attorney General's office, nor can the court surmise or speculate, but in this case, counsel for the Relator has submitted two letters written by the Attorney General to a person, evidently an intimate personal friend, whose services apparently had been enlisted by Relator or someone on her behalf.

In the first of these letters, the Attorney General wrote on September 9, 1948: 104

"This will acknowledge your letter of August 27, on behalf of Mrs. Ellen Knauff.

"I recall her case very well and after giving it very careful consideration, signed the exclusion order, for security reasons. I regret very much that I haven't a more favorable report for you.

"With kindest personal regards,"

And then on October 4th the Attorney General addressed another letter to the same person reading:

"Since talking with you last week, I have again looked into the case of Mrs. Ellen Knauff. 105

"I can see no alternative to excluding her. She was formally a paid agent of the Czechoslovakian Government, and reported on American personnel assigned to the Civil Censorship Division in Germany. The Federal Bureau of Investigation feels that she would be a hazard to internal security.

"I am sorry not to be able to give you a more favorable conclusion."

Accordingly, the writ is dismissed.

Settle order on notice.

December 4, 1948.

HULBERT,
United States District Judge.

(e) Degree of trade proficiency :—A

Special qualifications None.

(f) Medals, Clasps, Decorations, Mentions in Despatches, Special Commendations, etc.

DESCRIPTION OF ABOVE-NAMED AIRMAN/AIRWOMAN ON DISCHARGE.

Date of birth 1st. January, 1915. Marks or scars Vacc. 4 right arm.

Height 5 ft. 1½ ins. Vacc. 1 left arm. Birthmark left knee.

Complexion Fair.

Colour of eyes Green. Colour of hair Brown.

Airman's or airwoman's signature

(g) Brief statement of any special aptitudes or qualities or any special types of employment for which recommended :—

For the past seven months, this airwoman has been employed as an instructor under the "Educational Vocational Training" scheme. She has proved an able instructor in nutrition, cookery and household management, and her knowledge of German enabled her efficiently to instruct classes in this subject. Her English though not her native tongue is excellent.

She is very intelligent and of good personality and character. She has given every satisfaction.

Unit
Date
Stamp

RECORD OFFICE
26 JUL 1946
ROYAL AIR FORCE

(Signed) [signature]
for Air Commodore,
Commanding Air Officer i/c Records.
Royal Air Force.

Attention is directed to Notes (a) to (g) on reverse.

EX 4 " "

"

U.S. District Court Southern District of New York

I submit herewith a statement of facts to be used in filing such petition, three photographs of myself, each of which I have signed, and my declaration of intention (first paper), if one is required.

I hereby apply for a Certificate of Arrival (if required) showing my lawful entry into the United States for permanent residence. **NOTE.—IF THIS APPLICATION IS ACCOMPANIED BY A DECLARATION OF INTENTION (FIRST PAPER) MADE SINCE JULY 1, 1929, ANSWER ONLY QUESTION NUMBER 5 ON THIS PAGE.**

(1) I arrived in the United States through the port of NEW YORK, N. Y.
under the name of ELLEN KNAUFF
on the vessel U.S.A.T. COMFORT, on AUGUST 24 1948
(If arrival was through {Canada / Mexico} I arrived at the port of ... {Canada / Mexico}
on ... on the vessel ...)

(2) (If arrival by ship) Name of steamship line was U. S. ARMY TRANSPORT
first, second, or third cabin PASSENGER I arrived as a passenger, stowaway, seaman, member of crew, or otherwise ...

(3) The ticket on which I came to this country was bought at no ticket furnished. Transported as war bride
(4) The steamship ticket on which I traveled was in the name of ...
(5) I have not been absent from the United States ...
... (Dates of departure and return, ports of entry, and names of vessels or other means)
I have ... been absent at any other time.

(6) I was born in DORTMUND, GERMANY on JANUARY 1, 1915
(7) My father's full name is/was GUSTAVE RAPHAEL
(8) My mother's maiden name was ELIZABETH STEINWEG
(9) (If a married woman) My maiden name was ELLEN RAPHAEL
(10) My last foreign residence was LONDON, ENGLAND
(11) The place where I took the ship or train which landed me in the United States was BREMERHAVEN GERMANY
(12) I traveled on (an immigration visa, a passport, or permit to reenter) U.S. ARMY TRAVEL ORDERS AS WARBRIDE
(13) I was ... examined by United States immigration officers at NEW YORK, N.Y.
(14) (If not examined, state why, and give the circumstances of your entry) ...
(15) The person in the United States to whom I was coming was MRS. CLARA SCHULZ, KIOWA - KANSAS
(16) The place in the United States to which I was going was KIOWA - KANSAS
(17) The names of some of the passengers or other persons I traveled with, including members of my own family and their relationship to me, if any, are

16—11311-3

OVER

11

(22) How many times have you ever been married? I WIFE

(23) Have you ever been an inmate of an insane asylum? NO

(24) Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? NO

If so, give data, place and cause of arrest and disposition of each case

(25) Have you ever been deported from the United States, or are deportation proceedings now pending against you? NO. I AM ILLEGALLY HELD AT ELLIS ISLAND now.

If so, state all facts

(26) During the last ten (10) years I have been a member of the following organizations and no other YOUNG WOMEN CHRISTIAN ASSOCIATION IN LONDON AND ROYAL AIR FORCE ASSOCIATION IN LONDON

(27) Was your father or mother ever a citizen of the United States? NO If so, give full particulars

(28) Did you register under the Alien Registration Act of 1940? I do not know I dont believe so.

If so, state the number of your Alien Registration Receipt Card I mean received card

(Registration number)

(29) If male, did you register under the Selective Service (Draft) Law of 1940 as amended?

If so state your Draft Board No. Located at

(City) (County) (State)

Classified in class Reason for such classification

(30) Did you yourself fill out this form? YES If not, give the name and address of the person who did with the assistance of my attorney Gunther Jacobson, 36 W 44 N.Y.C

(31) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States. I am not, and have not been for the period of at least 10 years immediately preceding the date of this statement, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. I am able to speak the English language, unless physically unable to do so. I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

I CERTIFY that all the statements made by me in this application and form are true to the best of my knowledge and belief.

Ellen Krenoff

(Signature of applicant)

c/o Gunther Jacobson, Esq.

(Address at which applicant receives mail)

36 West 44th St.

N.Y.C.

10- 11311-3

106

Order to Show Cause

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

Upon the annexed affidavit of Gunther Jacobson, sworn to on December 11, 1948, and upon the petition, writ of habeas corpus herein and the documentary evidence sub-
107 mitted to this Court, and upon the decision of the Hon. Murray Hulbert, D. J., let the respondent by John F. X. McGohey, United States Attorney, show cause at Room 506 of the United States Court House on December 17th, 1948, at 10:30 A. M. or as soon thereafter as counsel can be heard, why the within habeas corpus proceeding should not be reargued; why the decision of Honorable Murray Hulbert, D. J. dismissing the writ should not be set aside and modified and why the writ of habeas corpus herein issued and served should not be sustained; why the Relator should not be afforded such other and further relief as may seem just;

108 And it is further Ordered that pending the decision on this motion the deportation of Respondent be stayed.

Sufficient cause appearing let the service of a copy of this order together with the affidavit upon which it is based, on the U. S. Attorney on or before December 14, 1948, be sufficient.

Dated, New York, N. Y., December 13, 1948.

/s/ HAROLD R. MEDINA
U. S. D. J.

(Seal)

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Affidavit of Gunther Jacobson in Support of Order to Show Cause

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

110

GUNTHER JACOBSON, being duly sworn, deposes and says. I am the attorney for the Relator.

I respectfully apply for the reargument of this case.

The Relator is a woman of thirty-three years, of German-Jewish origin, who in 1939 found refuge from the Nazis in Great Britain. She served from January 1, 1943 to May 30, 1946 in the Royal Air Force as a flight sergeant, and at the latter date she was honorably discharged from the Royal Air Force. A photostatic copy of the discharge papers is annexed hereto and marked Exhibit 11. Thereafter she was employed by the American Military Government in Germany, first in the Censorship Division until 1947, when that office was dissolved, and then by the Signal Division of the American Military Government in Germany. I am annexing hereto Exhibit 12, a photostatic copy of a mimeographed sheet signed by Mark Winn, 1st Lieut. C.A.C., setting forth the members of the Civil Censorship Division who by special order of July 11, 1947, shortly before this Division was dissolved, were awarded the EAME decoration ribbon for faithful and satisfactory service. The Court will notice that at the passage marked by a check the Relator herein under her previous name was mentioned as one of the recipients of this mark of distinction. The Relator's services were uniformly satisfactory as is attested by all

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her superiors who equally confirmed her excellence of character and her loyalty.

On February 28, 1948, the Relator married Mr. Kurt Knauff. This marriage was consummated with the consent of the office of the Advocate General of the United States, at Frankfort on the Main after considerable checking of the personalities involved. The Relator's husband, who is a citizen of the United States, was a soldier in the Armed Forces of the United States from November 21, 1942, to January 7, 1946, at which time he received an honorable discharge at Fort Dix. He returned to the American Army
113 in Germany in a civilian capacity and is as such now connected with the ~~American~~ Military Government in Frankfort on the Main.

In June 1948, the Relator secured a temporary leave of absence from the Signal Division of the U. S. Army for the purpose of going to the United States. She desired to gain admission to the United States as a war bride, pursuant to Public Law 271 of December 28, 1945 (8 U. S. C. 232-237). She also desired on the occasion of this trip to make immediate application for naturalization under Section 312 of the Nationality Act of 1940, which provides that the spouses of American citizens stationed abroad who are in the em-
114 ploy of the American Government may apply for citizenship if physically present in the United States, in any District Court, without the necessity of showing previous residence in this country.

The Relator arrived at the Port of New York on August 14, 1948. Immediately thereafter she was taken to Ellis Island for detention. No admission hearings of any kind or nature were administered to her. In particular, she was never presented to any board of special inquiry which is the statutory fact finding tribunal that has to decide on the admission of aliens to the United States. After two and one-half months of detention during which no charges were

levied against the Relator, nor was Relator given a chance of refuting any charges, notification was sent to her husband that Relator was denied admission to the United States. The letter of notification dated October 8, 1948, is annexed hereto as a photostatic copy Exhibit 13.

Immediately thereafter Relator's husband who had come to the United States upon receipt of a temporary leave of absence, instituted the present habeas corpus proceeding, in which Mr. Kurt W. Knauff demanded in his own name and in his own behalf as well as in that of his wife, that she be released from custody, and admitted to the United States.

This matter came on for hearing before Hon. Murray Hulbert of this Court on November 16, 1948. Judge Hulbert by decision made and opinion rendered on December 4, 1948, ordered the writ dismissed. No order has been entered yet.

The re-argument herein is sought for the following reasons:

The gist of Judge Hulbert's opinion is that pursuant to the decision of the U. S. Supreme Court in *Ludecke* v. *Watkins*, 335 U. S. 140, the United States is still at war with Germany and therefore the special war powers of the Government are still in existence.

It is submitted that the *Ludecke* case does not meet the particular issues of the present case. Ludecke was not a war bride. He was an alien enemy who had resided in the United States since prior to the war. He was sought to be deported by the Attorney General pursuant to the powers granted to the Attorney General in 50 U. S. C. 21 to 24. In determining whether or not the United States was still at war so that the extraordinary powers of the Alien Enemy Act could be exercised by the Government, the Supreme Court determined in a five to four decision that this country is still at war with Germany.

In the present case reference was made to the Act of December 28, 1945, 8 U. S. C. 232-237. That Act provides:

> " • • • notwithstanding the documentary requirements of any of the immigration laws or regulations, Executive orders, or Presidential proclamations issued thereunder, alien spouses or alien children of United States citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise, admissible under the immigration laws and if application for admission is made within three years of December 28, 1945, be admitted to the United States *Provided,* That every alien of the foregoing description shall be medically examined at the time of arrival in accordance with the provisions of section 152 of this title, and if found suffering from any disability which would be the basis for a ground of exclusion except for the provision of sections 232-237 of this title, the Immigration and Naturalization Service • • • ."

The Court will notice that the admission of veterans' spouses is ordained if they are otherwise admissible under the Immigration laws. This sentence does not take in the extraordinary police powers of the Attorney General pursuant to Sections 175.52-57 of Title 8 of the Code of Federal regulations. The Act of 1945 also does not permit exclusions pursuant to Presidential proclamations. Only the exclusions under the Immigration laws are maintained and the Court is respectfully requested to reconsider the finding that 8 U. S. C. 232 did not affect Presidential Proclamation 2523 under which the Government has been proceeding.

It is respectfully pointed out that pursuant to 8 U. S. C. 236, the Second World War shall be deemed to have ceased upon the termination of hostilities as declared by the Presi-

dent for the purposes of Public Law No. 271 of 1945. With respect to war brides, therefore, the Second World War is deemed to have ceased and the Court is respectfully requested to examine Judge Hulbert's finding that under the *Ludecke* case cited above we are still at war with Germany. Inasmuch as Ludecke was no war bride, the question here involved was not decided, discussed or otherwise raised or touched in the *Ludecke* decision. 121

It is furthermore respectfully submitted that while as Exhibit 13 above, officially no reasons were given for Mrs. Knauff's exclusion from the United States, the Attorney General stated in his private letter mentioned on the last page of Judge Hulbert's opinion, dated October 4, 1948: 122

> "She was formerly a paid agent of the Czechoslovakian government and reported on American personnel assigned to the Civil Censorship in Germany. The Federal Bureau of Investigation feels that she would be a hazard to internal security."

The attention of the Court is respectfully directed to the fact that the Civil Censorship Division as Exhibit 12, shows, thought otherwise. At the time said Civil Censorship Division was dissolved, Mrs. Knauff was decorated for faithful and satisfactory service. The Attorney General's findings therefore are contrary to the findings of another Government agency, and the question is raised whether this Court shall tolerate the situation in which one Government agency, the F.B.I., spies upon other Government agencies, the American Military Government in Germany, and does this outside of the jurisdiction of the United States where the F.B.I. has no business or standing. 123

It is furthermore submitted that the personnel of the Civil Censorship Division in Frankfort on the Main was made known to the public by mimeographed publications

124 similar to Exhibit 12 and that it was no military secret to show the names of the personnel of the Civil Censorship Division. While Mrs. Knauff denies that she gave information to the Czech government or any other government, it is respectfully argued that had she done so it would have been entirely proper.

It is furthermore submitted that the present Communist government in Czechoslovakia came to power in 1948; that in 1947 up to the time the Civil Censorship Division was dissolved, Czechoslovakia was our ally and that the relationship between this Government and the previous govern-
125 ment of Czechoslovakia was friendly and cooperative. The charges levied in the Attorney General's private letter against the Relator therefore make no sense and are quite obviously on the face thereof derived from evil and contaminated sources.

The Relator herein raises as a further point to sustain the writ of habeas corpus, the right under Section 312 of the Nationality Act to be admitted to United States citizenship. An application for a certificate of arrival and preliminary form for petition for naturalization on Form N 400 was submitted on or about the 23rd of November 1948. A copy of said petition is annexed hereto and marked Exhibit
126 14. Subsequent to the filing of said application for naturalization the undersigned attorney has been advised by counself for the Immigration Naturalization Service that this application will not be processed prior to Mrs. Knauff's admission to the United States. The petition for writ of habeas corpus herein is supplementarily based upon Mrs. Knauff's right pursuant to Section 312 of the Nationality Act of 1940 to file her petition for naturalization at once and an order is requested herein sustaining the writ of habeas corpus on the additional ground that she is entitled to immediate processing of her application for naturalization. An order is also requested herein directing the Dis-

trict Director of Naturalization to call Mrs. Knauff for an immediate hearing in which she may formally file her petition for naturalization.

The Court is finally advised that in the present habeas corpus proceedings not only the rights of the Relator for entry into the United States are the subject matter of discussion, but that Mr. Kurt Knauff, who signed the petition for habeas corpus as an honorably discharged veteran, has personal rights under public law 271. Mr. Knauff protests against the exclusion and detention of his wife. As an honorably discharged veteran of the United States Army during the Second World War, Mr. Knauff in recognition of his sacrifices for his country was given the privilege of living with his wife in the United States. It is for this reason that Public Law 271 curtailed the wartime police powers of the Government. Mr. Knauff personally asks that in any decision to be made herein his rights to the society of his wife should be considered and discussed, as distinguished from those of Mrs. Knauff personally.

No previous petition has been made for the relief herein demanded.

WHEREFORE it is respectfully prayed that this Court may grant the argument so that the petition urged in this affidavit may be spread before this Court.

GUNTHER JACOBSON.

(Verified on December 11th, 1948.)

Exhibit 11 Annexed to Affidavit of Gunther Jacobso

COPY OF SERVICE AND CERTIFICATE OF DISCHARGE FROM ROYAL AIR FORCE

(See opposite page ☛)

Statement of Facts To Be Used in Making and Filing My Petition for Naturalization

3

(1) My full, true, and correct name is ELLEN KNAUFF BOKHORNOVA RAPHAEL
(Full, true name without abbreviations, and any other name which has been used must appear here)

(2) My present place of residence is 114-20 133rd Street, (Number and street) South Ozone Park, (City or town) L.I., (County) N.Y.

(3) My occupation is government clerk (4) I am 53 years old

(5) I was born on JANUARY (Month) 1 (Day) 1905 (Year) in DORTMUND (City or town) GERMANY (Country)

(6) My personal description is as follows: Sex F; color WHITE; complexion FAIR; color of eyes GREY; color of hair BROWN; height 5 feet 1 1/2 inches; weight 110 pounds; visible distinctive marks NONE; race WHITE; present nationality STATELESS

(7) I am married; the name of my husband is KURT WALTER KNAUFF; we were married on FEBRUARY (Month) 28 (Day) 1928 (Year) at FRANKFORT (City or town) GERMANY (State or country); he was born at ALTLEBEN (City or town) GERMANY (Country) on DECEMBER (Month) 7 (Day) 1908 (Year); entered the United States at NEW YORK (City or town) - NY (State) on MARCH (Month) 17 (Day) 1939 (Year) for permanent residence in the United States and now resides at NEW YORK (City or town) - QUEENS (County) - NY (State) and was naturalized on APRIL (Month) 28 (Day) 1943 (Year) at COLUMBIA (City or town) S.C. (State) certificate No. 5488116; or became a citizen by

(8) I have NO children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living are as follows:

(9) My last place of foreign residence was LONDON (City or town) ENGLAND (County, district, province, or state) (Country) (10) I emigrated to the United States from Frankfort (City or town) Germany (Country)

(11) My lawful entry for permanent residence in the United States was at Was never illegally detained at (City or town) under the name of Ellis Island, since my arrival on August (Month) 14 (Day) 1948 (Year) on the West Comfort (Name of vessel or other means of conveyance)

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
Port	Date (Month, day, year)	Vessel or Other Means of Conveyance	Port	Date (Month, day, year)	Vessel or Other Means of Conveyance

(13) I declared my intention to become a citizen of the United States on no declaration on file (Month) (Day) (Year) in the New York (Name of Court) Court of at (City or Town) (State)

(14) I have resided continuously in the United States of America since August 14, 1948.

136 *Exhibit 11*

NOTES.

(*a*) Date of Mobilization, Embodiment or Recall from "Deferred" Service.

(*b*) Here insert R.A.F., R.A.F.V.R., A.A.F., W.A.A.F., or Class E. or F. Reserve, as applicable.

(*c*) "Cause of Discharge" should give precise words as applicable in K.R. & A.C.I., para. 652.

(*d*) "V.G." is the highest character which can be awarded
137 in the Royal Air Force.

(*e*) The trade proficiency headings A and B signify:—

TRADESMEN.

A. Skill in his trade (applicable to airmen up to the rank of corporal, inclusive).

B. Ability as technical warrant or non-commissioned officer, i.e., as foreman manager, foreman, or supervisor in his trade.

AIR CREW PERSONNEL.

138 A. Proficiency as pilot, navigator, air bomber, air gunner, etc.

B. Ability as a warrant or non-commissioned officer.

(*f*) The word "None" to be inserted where necessary.

(*g*) Should be a brief narrative statement in the form of a testimonial.

Exhibit 11

WARNING.

(To the airman/airwoman named on this Form.)

(i) You are hereby reminded that the unauthorized communication by you to another person at any time of any information you may have acquired whilst in His Majesty's Service which might be useful to an enemy in war renders you liable to prosecution under the Official Secrets Act.

(ii) Your discharge does not remove any liability you may still have to be called up for further national service or any such liability that may be placed upon you by future legislation.

(iii) You should on no account part with this certificate or forward it by post when applying for a situation, but should use a copy attested by a responsible person. If the certificate is lost it will be replaced only when its loss can be proved to have been due to very exceptional circumstances. Application for replacement should be made to the Air Officer-in-Charge of Records, Royal Air Force.

ANY PERSON finding this Certificate is requested to forward it in an unstamped envelope to the Under Secretary of State, Air Ministry, London, W.C.2.

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Exhibit 12 Annexed to Affidavit of Gunther Jacobson

GROUP "B" 7742 CIVIL CENSORSHIP DIVISION

EUROPEAN COMMAND

APO 757 US ARMY

11 July 1947

SPECIAL ORDERS }
NUMBER 19 }

1. Under the provisions of Paragraph 1 a. Section III, USFET, CPC No. 24, dated 21 February 1947, the EAME
143 (European-African-Middle Eastern) Theater Ribbon for faithful and satisfactory service is awarded to the following named employees of this Organization.

BAHRT, George
BERNARD, Sofie
BIRNHOLZ, Freda
BLAU, George
DIEDRICH, John E.
DOSSENBACH, Josette
GIMBLE, Warren
GREENSIDE, Max
HAFNER, Louis
144 HARMS, Ernest
HEYDLE, Kurt
IHRIG, Karl
LANDER, Alfred
MAYER, Sigfried
MULLER, Gerda
PLATE, Johannes
ROSSELAND, Dorothy
SCHRAN, Henry
VOLKHARDT, Horst
WEISE, Hennslore
THEYS, Henry
ULMANN, Mae
ZETSCHE, Pedro
ADLER, Betty
ADLER, Jakob
BACK, Lore
BARTER, Albert G.
BODLAENDER, Guenther
BODLAENDER, Ilse
BOXHORNOVA, Ellen
BRAKAS, Martin
DAHLIN, Alice
DORFNER, Henrietta
DROST, Ella
FEINER, Frieda
FRANKE, Gisela
GILBERT, Maurice
GOLDIN, Leonard
HELLER, Ernest
HERBERT, Maurice
HEUMANN, Hilda
HILTON, Herta
HILTON, Leslie
HOLZ, Edith

Isaac, Bruno
Jensen, Erik
Jorgensen, Vibeke
Kellermann, Wolfgang
Koplewicz, Getz
Larsson, Inge H.
Lehfeldt, Eva R.
Marle, Gertrud
Mautner, Stefan
Meier, Ruth L.
Monies, Lora
Morawetz, Ludwig
Moses, Emil
Muller, Erna
Munck, Eva
Neuhaus, Annelore
Neuhaus, Ingrid
Neumann, Fritz
Neumann, Maria
Neumann, Vilma
Nielsen, Mabel
Ostburg, Else
Pavel, Hans
Pechtur, Maria
Raschkowan, Alfred
Reich, Samuel
Reiss, Rudolph H.
Royce, Geoffrey
Sad er, Paula
Schiller, Lola
Schmidt, Anna M. L.
Siesel, Peter
Sittenfeld, Inge
Sommerfeld, Max
Spoegler, Lotte
Steinbach, Regina
Suss, Grete
Svendsen, Axsel
Unger, Cecilie
Voxsin, Gerard
Weber, Hubert
Weinstein, Moses
Wolfova, Charlotte
Zetsche, Krista

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By Order of Lieutenant Colonel Cushman: 147

Mark Winn
Mark Winn
1st Lt., CAC
Adjutant

148 **Exhibit 13 Annexed to Affidavit of Gunther Jacobson**

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
70 Columbus Avenue
New York 23, N. Y.

Please refer to this File Number
0300-255620
DEO

October 8, 1948

Mr. Kurt W. Knauff
114-20 – 133rd Street
149 South Ozone Park
Long Island, New York

Dear Sir:

Information was sent to this office to the effect that an order has been entered directing that Mrs. ELLEN KNAUFF be denied admission to the United States and that she be returned to the country whence she came.

Very truly yours,

W. J. ZUCKER
Acting District Director
150 New York District

By PAUL G. WERNER
Paul G. Werner
Assistant District Enforcement Officer

Exhibit 14 Annexed to Affidavit of Gunther Jacobson

COPY OF CERTIFICATE OF ARRIVAL AND PRELIMINARY FORM FOR PETITION FOR NATURALIZATION

(See opposite page ☛)

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Affidavit of Gunther Jacobson Amending Previous Affidavit in Support of Order to Show Cause

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

155 GUNTHER JACOBSON, being duly sworn, deposes and says:

I make this affidavit to amend my previous affidavit on which re-argument was granted.

The relator respectfully asks the Court to consider that the Passport Act of 1918, as amended in 1941, does not authorize the Immigration Service to dispense with a hearing. It merely authorizes them to impose additional grounds of exclusion. The exclusion of the relator therefore is in violation of the due process clause of the constitution of the United States.

156 The Passport Act of 1918 as amended in 1941, delegates legislative powers to the executive branch of the government.

It is urged that for this reason it is unconstitutional just as the NRA legislation was set aside by the Supreme Court thirteen (13) years ago on the ground of unconstitutional delegation of legislative powers.

The government is charged with arbitrarily excluding Mrs. Knauff from the United States. No hearing was held. There is a prima facie case of arbitrary and capricious action particularly in view of the excellent qualifications of Mrs. Knauff shown by the documents in evidence. Under the circumstances, the government, if it wants to justify

its action, should produce its files which it has refused to do. This shows that Mrs. Knauff's exclusion is in violation of due process.

Public Law 552, 80th Congress excludes aliens who are coming to this country for the purpose of engaging in activities that will endanger the public safety of the United States. The statute provides that an exclusion on this ground can only be had after a statutory hearing in which the exclusion issue is tried. It seems incongruous that an alien like Mrs. Knauff can be excluded without a hearing on the ground that her entry will be prejudicial to the best interests of the United States, where if she were entering to engage in activities that will endanger the safety of the United States she would be entitled to a statutory hearing pursuant to Public Law 552. It follows that Congress could not have wanted to delegate to the government the powers the government is trying to exercise under sections 175.52 to 175.57 CRF.

WHEREFORE, it is respectfully prayed to sustain the writ of habeas corpus herein upon re-argument.

GUNTHER JACOBSON.

(Verified on December 17th, 1948.)

Germany (Country)

(11) My lawful entry for permanent residence in the United States was at New York (City or town) finally obtained at under the name of Ellis Island, since my arrival on August 14 (Month) 1948 (Day) (Year)

on the U.S.A. Comfort (Name of vessel or other means of conveyance)

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
Port	Date (Month, day, year)	Vessel or Other Means of Conveyance	Port	Date (Month, day, year)	Vessel or Other Means of Conveyance

(13) I declared my intention to become a citizen of the United States on 2nd declaration (Month) (Day) (Year) in the Eastern Dist. (Name of Court)

Court of at (City or Town)

(14) I have resided continuously in the United States of America since August (City or Town) 14, 1948 (State)

and continuously in the State of New York where I now live since August 14, 1948 (Month) (Day) (Year)

(15) I have not heretofore made petition for naturalization. Now (Month) (Day) (Year)

at (City or town) (County) (State) in the (Name of court), and such petition was dismissed or denied by that court for the following reasons and causes, to wit , and the cause of such dismissal or denial has since been cured or removed.

(16) I wish the naturalization court to change my name to —

(17) (1st witness) CARL ULRICH, STORE MANAGER

residing at 114-20 133rd (Name) Street, SOUTH OZONE PARK, L.I., N.Y. (Number and street) (State)

I first met this witness in the United States on September (Month) 19 (Day) 47 (Year)

(18) (2d witness) MRS. ANN RETTO, HOUSE WIFE

residing at 40-30 44th St., L.I. City, L.I., N.Y. (Number and street) (State)

I first met this witness in the United States on Sept. (Month) 19th (Day) 1948 (Year)

I CERTIFY that the above statement of facts has been read by or to me and that the statement is true to the best of my knowledge and belief.

Ellen Krasnoff (Name of applicant) 170 Grant Jackson 36 W 44th St., N.Y.C. (Address at which applicant receives mail)

DO NOT FILL IN BLANKS BELOW

Affidavit of witnesses to show residence of petitioner as follows:

United States

State

Examiner

DO NOT FILL IN BLANKS BELOW

Corrections numbered to in this Preliminary Form for Petition for Naturalization, N-400, were made by me or at my request.

Applicant

Date

10—11311-1

14/2

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Memorandum Opinion of Hulbert, J.

Motion of reargument granted and after such reargument the Court adheres to its former opinion. We cannot disregard the letters of the Attorney General of which relator now complains. They were apparently written in response to solicitations in her behalf and put into the case by her attorney. There is no right to citizenship until the petitioner is lawfully in the country and this Court does not feel authorized to disregard the order of the Attorney General but believes it was a lawful exercise of statutory power conferred upon him. The order to be entered will
161 contain a provision for a stay for a period to be agreed upon by counsel, and if such agreement can not be had the Court will determine and insert the day. Application for bail is denied so that within such period Relator may appeal and apply to the Circuit Court of Appeals for bail.

New York, December 27, 1948.

HULBERT,
U. S. D. J.

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Order Dismissing Writ of Habeas Corpus

163

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

The writ of habeas corpus in the above-entitled matter having come on to be heard on the 16th day of November, 1948, before this Court, and after hearing Gunther Jacobson, Esq., attorney for relator, in support of the writ, and John F. X. McGohey, United States Attorney for the 164
Southern District of New York (William J. Sexton, Assistant United States Attorney, of Counsel, in opposition thereto, and upon the petition for the writ of habeas corpus, the return thereto, and all the papers and proceedings had herein, and the Court having filed its opinion dated December 4, 1948, and a motion for reargument having been granted, and the motion for reargument having come on to be heard on the 20th day of December, 1948, and the Court having adhered to its former opinion by a memorandum decision filed on the 27th day of December, 1948, it is

ORDERED, that the writ of habeas corpus be dismissed, and it is 165

FURTHER ORDERED, that the relator be remanded to the custody of the Commissioner, Immigration and Naturalization Service, at Ellis Island, New York Harbor, New York, and it is

FURTHER ORDERED, that the relator's deportation be stayed until January 11, 1949, within which time relator is to file a notice of appeal and make whatever other application for a stay pending any appeal which relator may take herein.

Dated: New York, N. Y., January 3rd, 1949.

HULBERT,
U. S. D. J.

166

Notice of Appeal

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Civ. 47-585

UNITED STATES OF AMERICA, *ex rel.* ELLEN KNAUFF,

Relator,

against

167

W. FRANK WATKINS, Ditsriet Director of Immigration and Naturalization Service,

Respondent.

Sir:

PLEASE TAKE NOTICE that the Relator herein appeals to the United States Court of Appeals for the Second Circuit from the final order herein, dated January 3, 1949, by which order the writ of habeas corpus was dismissed and the relator remanded to the custody of the Commissioner of Im-

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migration and Naturalization, and this appeal is from the whole of said order and from each and every part thereof.

Dated: New York, January 4, 1949.

Notice of Appeal 169

Yours, etc.,

GUNTHER JACOBSON,
Attorney for the Relator,
Office & P. O. Address,
36 West 44th Street,
New York 18, N. Y.

To:

1. JOHN F. X. MCGOHEY, Esq.,
U. S. Attorney for Respondent. 170

2. CLERK U. S. DISTRICT COURT,
Southern District, N. Y.

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Stipulation as to Correctness of Record

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, *ex rel.* ELLEN KNAUFF,

Relator-Appellant,

against

173 W. FRANK WATKINS, District Director of Immigration and Naturalization Service,

Respondent-Appellee.

It is hereby stipulated and agreed, that the foregoing is a true copy of the transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, January , 1949.

174 GUNTHER JACOBSON,
Attorney for Relator-Appellant.

JOHN F. X. McGOHEY,
U. S. Attorney,
Attorney for Respondent-Appellee.

175

Clerk's Certificate

UNITED STATES OF AMERICA, *ex rel.* ELLEN KNAUFF,
Relator-Appellant,

against

W. FRANK WATKINS, District Director of Immigration and Naturalization Service,
Respondent-Appellee.

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UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

I, CHARLES J. H. FOLLMER, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York this day of , in the year of our Lord one thousand nine hundred and forty-nine and of the independence of the said United States the one hundred and seventy-third.

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William C. Connell
CHARLES J. H. FOLLMER,
Clerk.

(Seal)

[fol. 60] In United States Court of Appeals for the Second Circuit, October Term, 1948

No. 187

(Argued February 18, 1949. Decided March 11, 1949)

Docket No. 21254

United States of America, ex rel. Ellen Knauff, Relator-Appellant,

against

W. Frank Watkins, District Director of Immigration and Naturalization Service, Respondent-Appellee

Before Augustus N. Hand, Chase and Frank, Circuit Judges

Appeal from an order of the District Court for the Southern District of New York dismissing a writ of habeas corpus. Affirmed.

John F. X. McGohey, United States Attorney for the Southern District of New York; Attorney for Respondent-Appellee.

William J. Sexton, Assistant United States Attorney.

[fol. 61] Louis Steinberg, District Adjudications Officer, Immigration and Naturalization Service, United States Department of Justice.

Alvin Lieberman, Attorney, Immigration and Naturalization Service, United States Department of Justice, of Counsel.

Gunther Jacobson, Attorney for Relator.

Opinion

Chase, Circuit Judge:

The question which must be answered on this appeal is whether the wife of an American soldier who is a war bride within the purview of Public Law 271 of 1945, 59 Stat. 659, 8 U. S. C. A. § 232, may be denied admission to the United States without a hearing before a Board of Special Inquiry.

The relator-appellant is the lawful wife of Kurt W. Knauff who is a naturalized American citizen now employed in a civilian capacity by the American Army of Oc-

cupation in Germany. Mr. Knauff served as a soldier in the armed forces of the United States from November 21, 1942 until he was honorably discharged on January 17, 1946. He married the appellant in Germany on February 28, 1948 after having obtained consent so to do from the Office of the Advocate General of the United States Army at Frankfort-on-the-Main. The appellant, born on January 1, 1915, is a native of Germany who is now stateless and who served in England in the Royal Air Force as a flight sergeant from January 1, 1943 to May 30, 1946 and later was employed in Germany in the Civil Censorship Division and the Signal Division of the United States Army. Her official record in so far as appears is excellent.

[fol. 62] She obtained temporary leave from her employment in Germany in June 1948 to enter the United States to apply for naturalization as an American citizen under the provisions of Sec. 312 of the Nationality Act of 1940, 8 U. S. C. § 712, and arrived at the Port of New York on an American Army transport on August 14, 1948. After examination she was temporarily excluded by an immigration inspector. Thereafter she was denied further hearing and the exclusion order was made permanent by action of the Attorney General pursuant to the provisions of Sec. 175.57 (a) of Title 8 of the Code of Federal Regulations. She has since been detained at Ellis Island for return to Germany. The writ was issued on the application of her husband who came here for that purpose and who has since returned to Germany. It was dismissed after hearing and upon a rehearing the order of dismissal was left unchanged.

Sec. 223 of Title 22 U. S. C., 40 Stat. 559, as amended, 55 Stat. 252, provides that: "When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by sections 223-226(b) of this title be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—

(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such

reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe; * * *"

[fol. 63] On November 14, 1941 the President did, by Proclamation No. 2523, impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States which were to remain in force and effect until he otherwise ordered. This proclamation, insofar as now pertinent, provided that, "No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General."

Pursuant to the authority thus given them the officials just named did prescribe the rules and regulations which apply to the entry of the appellant and which are to be found in Title 8 of the Code of Federal Regulations Secs. 173.53 and 175.57. In Sec. 175.53 aliens who are excludable are classified in some detail and in Sec. 175.57 it is provided that, "(a) Any alien, even though in possession of a permit to enter, or exempted under §§ 175.41 to 175.63, inclusive, from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in § 173.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded [fol. 64] and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

(b) In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the cate-

gories set forth in § 175.53, no hearing by a board of special inquiry shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 173.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

It was as a result of following the procedure thus provided and the exercise of the authority thus given to the Attorney General that the appellant was excluded and ordered deported to Germany.

Passing for the moment any rights she or her husband may have under the so-called War Brides Act, *supra*, we hold that the action taken in respect to her was lawful. Sec. 223 of Title 22 U. S. C. together with the President's Proclamation pursuant thereto and the rules and regulations promulgated thereunder set up a basis, and the applicable procedure, for the exclusion of aliens in addition to that found in Secs. 136 and 137 of Title 8 U. S. C. and the procedure prescribed in Sec. 152 of that Title. It is not claimed, and the claim would clearly be untenable if made, that either Sec. 136 or 137 applies and neither does Sec. 152, either by statute or by the President's Proclamation, where, as here, the exclusion is "on the basis [fol. 65] of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

Thus it was provided that, as was done in this instance, an alien who sought entry to the United States could be temporarily excluded by any official of the Department of Justice and could not be admitted but must be excluded permanently and deported unless after the temporary action had been reported to the Secretary of State the Attorney General was satisfied that the admission of the alien would not be prejudicial to the interests of the United States. And the Attorney General could reach the conclusion that he was satisfied that the alien should be admitted only after he had consulted the Secretary of State. There is no requirement, however, that the Attorney General need consult the Secretary of State in the event that he is not satisfied that the alien may be admitted with-

out prejudice to the public interest. In this instance it does not appear whether the Attorney General did consult the Secretary of State and though the appellant raises that point it is of no consequence for the reasons just stated.

The appellant's other contentions to the effect that the basis of her exclusion and the procedure followed were unlawful are that Sec. 223 of Title 18 U..S. C. is too vague in its attempted delegation of legislative power; that the regulations do not conform to the President's Proclamation and that the regulations are themselves too vague. We find no merit in any of these objections.

The power of Congress to deny admission to aliens is absolute. *Fok Young Yo* v. *United States*, 185 U. S. 296; *Kaoru Yamataya* v. *Fisher*, 189 U. S. 86. Consequently there need be no such limitations upon the terms of delegation of that power as were held to be a constitutional prerequisite to the delegation of legislative power in *Schechter Corp.* v. *United States*, 295 U. S. 495. Further- [fol. 66] more, these regulations were within the wide sweep of delegation to executive discretion under the war power, as to which see *Hirabayashi* v. *United States*, 320 U. S. 81, and we are still at war with Germany. *Ludecke* v. *Watkins*, 335 U. S. 160.

The system which Congress set up and which has been followed in this instance comprises the promulgation for the guidance of subordinate officials of a series of classifications of excludable aliens to supplement the then existing laws. If subordinate officials are in doubt as to the admissibility of any alien under the supplemental regulations, such officials have the power to exclude temporarily and the duty to report that action for the attention of officials of cabinet rank who may make the exclusion permanent without a formal hearing, or any hearing before a board of special inquiry, provided the higher official charged with duty to decide does decide on the basis of confidential information that the alien is not admissible under the applicable law and regulations. The obvious purpose was to enable this country to be protected from the entry of aliens who were within the excludable categories without having to make public the proof of that status when in the judgment of responsible officials the disclosure of such information or the source of it would be detrimental to the public safety. Non-resident aliens have no interest which may not lawfully be dealt with in that way. *United States*

ex rel. Medeiros v. *Watkins*, 2 Cir., 166 F. 2d 897; *United States ex rel. Schlueter* v. *Watkins*, 2 Cir., 158 F. 2d 853.

That being so, the appellant has no grievance which can be remedied because some of the classifications in Sec. 175.53 may be so broadly stated as to be, as she says, vague. Some are very definite and explicit, but since discretionary action of the Attorney General was based on confidential information neither the appellant, nor we, can know the [fol. 67] excludable class into which that put her. A reading of Secs. 175.53 and 175.57 in the light of the authorizing statute and Presidential Proclamation leaves no doubt, however, that, insofar as they are explicit, they fall within the scope of the delegated power to promulgate rules and regulations which are reasonably drawn to accomplish the evident purpose of Congress. Regulations having been duly adopted, the burden is on one who questions them to show their invalidity. *Montana Eastern Limited* v. *United States*, 9 Cir., 95 F. 2d. 897. And this burden can be carried only by showing as a minimum that the regulations are inconsistent with the underlying statute or are unreasonable or inappropriate. *United States* v. *Morehead*, 243 U. S. 607; *Boske* v. *Comingore*, 177 U. S. 459. It has not been discharged by this appellant.

Nor do the reasons for exclusion stated by the Attorney General indicate affirmatively an arbitrary action on his part or an unreasonable basis for determining that appellant's entry would be prejudicial to the interests of the United States. The appellant, having failed to show affirmatively unfairness either in the regulations or in the action of the Attorney General, cannot complain merely of a lack of procedural due process. *United States ex rel. Schlueter* v. *Watkins*, *supra*.

Yet that is not enough to justify the order below dismissing the writ. The appellant insists that, even though the regulations are valid, her entry is not barred by them because she is entitled to enter as a matter of right under the so-called War Brides Statute, *supra*. That she is a person within the scope of that statute has been established and whether she is right or wrong in her demand for entry depends upon the proper construction of Sec. 1 of that act, 59 Stat. 659, 8 U. S. C. A. § 232. It reads so far as now pertinent as follows: "* * * notwithstanding the documentary requirements of any of the immigration laws or [fol. 68] regulations, Executive orders, or Presidential

proclamations issued thereunder, alien spouses * * * of United States citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws and if application for admission is made within three years of December 28, 1945, be admitted to the United States: * * *"

Sec. 5, 8 U. S. C. A. §236, of the act provides that, "For the purposes of this Act the Second World War shall be deemed to have commenced on December 7, 1941, and to have ceased upon the termination of hostilities as declared by the President or by a joint resolution of Congress." On December 31, 1946, the President by Proclamation No. 2714, while recognizing that a state of war still existed, did proclaim the cessation of hostilities of World War II effective on twelve o'clock noon on that day.

From this the argument of the appellant is in substance (1) that 22 U. S. C. Sec. 223 is not an immigration law and consequently neither it nor the regulations above discussed limit the scope of the War Brides Act; and (2) that as World War II ceased for the purposes of the War Brides Act on December 31, 1946 the powers delegated by 22 U. S. C. Sec. 223 were, in so far as the War Brides Statute is concerned, terminated on that date.

We cannot agree with either contention. Though Sec. 223 of Title 22 may properly enough be said not to be one of the statutes embraced within the concept of immigration laws in times of ordinary tranquility and is, as we have seen, a statute to supplement them as a war measure it nevertheless does deal with matters affecting immigration into this country and emigration therefrom and is, while it is effective, one of the immigration laws subject to which a war bride is made admissible under Sec. 232 of Title 8 U. S. C. See *Bonham* v. *Bouiss*, 9 Cir., 161 F. 2d 678.

[fol. 69] It was in effect when this appellant presented herself at the Port of New York for admission and still is. By its terms it was made effective not only when the United States is at war but also during the existence of the national emergency proclaimed by the president on May 27, 1941 and as to aliens when a third named condition was met. We need not rely upon more than the continued existence of the national emergency above mentioned. That alone makes the regulations under which the appellant was excluded still effective as to her though we do not mean to

imply that World War II does not still exist for that purpose also. We merely find no occasion for decision as to that.

Finally the appellant argues that she is in this country while being detained at Ellis Island and is entitled to apply for naturalization under the provisions of Section 312 of the Nationality Act of 1940 (8 U. S. C. Sec. 712). Without intimating that we agree that her presence on Ellis Island while being held there under an order of exclusion is enough to put her "in the United States" within the meaning of the above statute, we find it a sufficient answer to this contention to point out that whatever rights she may have under the naturalization laws do not exempt her from the scope of laws pertaining to the admission of aliens.

Affirmed.

[fol. 70] In United States Court of Appeals, Second Circuit

Present: Hon. Augustus N. Hand, Hon. Harrie B. Chase, Hon. Jerome N. Frank, Circuit Judges.

U. S. ex rel. Ellen Knauff, Relator-Appellant,

v.

W. Frank Watkins, District Director of Immigration, Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York.

Judgment—Filed March 11, 1949

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

(S.) Alexander M. Bell, Clerk.

[fol. 71] [File endorsement omitted.]

[fol. 72] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 73] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 2, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.